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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/770,385

02/02/2004

Raymond J. Mueller

03-006

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22927

7590

11/14/2008

WALKER DIGITAL MANAGEMENT, LLC
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EXAMINER

RUDY, ANDREW J

ART UNIT

PAPER NUMBER

3687

MAIL DATE

DELIVERY MODE

11/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/770,385	Applicant(s) MUELLER ET AL.	
	Examiner Andrew Joseph Rudy	Art Unit 3687	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 43-80 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 43-80 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-5 and 43-80 are pending. Applicant cancelled claims 6-42.

Election/Restrictions

2. Applicant's election without traverse of claims 1-5 and 43 in the reply filed on August 13, 2008 is acknowledged.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 67 and 68 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 67, line 2, "presentation slots" is not clear as to its meaning in juxtaposition with the specification and drawings.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-5 and 43-80, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi et al., US 4,654,800.

Hayashi discloses, e.g. Fig. 3, an apparatus comprising a CPU 1, a digital switch, e.g. DS and automatically updating the unit price of an item. It is noted Applicant's apparatus claim 1, and those depending therefrom, requires just means. Clearly, Hayashi comprises such. Official Notice is taken that an apparatus and means have been common knowledge in the advertisement art. Intended use claim language, e.g. for determining a price, are given little, if any, patentable subject matter in juxtaposition with positively recited claim language, e.g. an apparatus, means. To have executed the intended use claim language with Hayashi would have been obvious to one of ordinary skill in the art.

7. Claims 1-5 and 43-80, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Official Notice.

Applicant's apparatus claim 1, and those depending therefrom, requires just means. Clearly, Hayashi comprises such. Official Notice is taken that an apparatus and means have been common knowledge in the advertisement art to implement intended use claim language. It is noted Applicant's means may be no more than paper and pencil. The paper may be viewed as the storage device storing price information that is stored thereon. The processor may be a person's hand using the pencil that generates information and crossing out old prices by dynamically entering new digital

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prices, the port may be nothing more than another piece of paper placed below the first piece of paper or some item adapted to receive the first piece of paper. This has been common knowledge in the digital menu art. Intended use claim language, e.g. for determining a price, are given little, if any, patentable subject matter in juxtaposition with positively recited claim language, e.g. an apparatus, means. To have executed the intended use claim language with the paper and pencil would have been obvious to one of ordinary skill in the art. It is noted that Official Notice is taken that an apparatus and means having a digital storage capacity has been common knowledge in the art. Implementing to replace a paper and pencil apparatus would have been obvious to one of ordinary skill in the art.

8. Further pertinent references of interest are noted on the attached PTO-892.

9. Applicant's two separate Information Disclosure Statements (IDS's) received February 2, 2004 and April 20, 2004 have been given a cursory reviewed. The sheer volume of such is noted. Applicant is requested to particularly point out the significance of such in juxtaposition with the claim language. Note the attached IDS's.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Joseph Rudy whose telephone number is 571-272-6789. The examiner can normally be reached on Monday thru Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew S. Gart can be reached on 571-272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew Joseph Rudy/
Primary Examiner, Art Unit 3687